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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

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**CAROLYN COLEMAN-**  
**WILLIAMSON,**

9  
10 Plaintiff,

11 vs.

12 CAROLYN W. COLVIN, Acting  
13 Commissioner of Social Security,

14  
15 Defendant.

16 Case No. 14-CV-03073 (VEB)

17  
18 DECISION AND ORDER

19  
20 **I. INTRODUCTION**

21 In August of 2010, Plaintiff Carolyn Coleman-Williamson applied for  
22 Disability Insurance Benefits (“DIB”) under the Social Security Act. The  
23 Commissioner of Social Security denied the application.

1 Plaintiff, represented by D. James Tree, Esq., commenced this action seeking  
2 judicial review of the Commissioner's denial of benefits pursuant to 42 U.S.C. §§  
3 405 (g) and 1383 (c)(3). The parties consented to the jurisdiction of a United States  
4 Magistrate Judge. (Docket No. 4).

5 On January 30, 2015, the Honorable Rosanna Malouf Peterson, Chief United  
6 States District Judge, referred this case to the undersigned pursuant to 28 U.S.C. §  
7 636(b)(1)(A) and (B). (Docket No. 21).

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9 **II. BACKGROUND**

10 The procedural history may be summarized as follows:

11 Plaintiff applied for DIB on August 2, 2010. (T at 145-53).<sup>1</sup> The application  
12 was denied initially and on reconsideration and Plaintiff requested a hearing before  
13 an Administrative Law Judge ("ALJ"). On July 20, 2012, a hearing was held before  
14 ALJ Timothy Mangrum. (T at 35). Plaintiff appeared with her attorney and testified.  
15 (T at 43-53). The ALJ also received testimony from Trevor Duncan, a vocational  
16 expert (T at 53-58).

17 On December 27, 2012, the ALJ issued a written decision denying the  
18 application for benefits and finding that Plaintiff was not entitled to DIB. (T at 15-

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<sup>1</sup>Citations to ("T") refer to the administrative record at Docket No. 15.

1 34). The ALJ's decision became the Commissioner's final decision on April 9,  
2 2014, when the Social Security Appeals Council denied Plaintiff's request for  
3 review. (T at 1-4).

4 On May 30, 2014, Plaintiff, acting by and through her counsel, timely  
5 commenced this action by filing a Complaint in the United States District Court for  
6 the Eastern District of Washington. (Docket No. 9). The Commissioner interposed  
7 an Answer on September 8, 2014. (Docket No. 14).

8 Plaintiff filed a motion for summary judgment on December 29, 2014.  
9 (Docket No. 19). The Commissioner moved for summary judgment on February 9,  
10 2015. (Docket No. 22). Plaintiff filed a reply brief on February 23, 2015. (Docket  
11 No. 23).

12 For the reasons set forth below, the Commissioner's motion is granted,  
13 Plaintiff's motion is denied, and this case is closed.

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### 1 III. DISCUSSION

#### 2 A. Sequential Evaluation Process

3 The Social Security Act (“the Act”) defines disability as the “inability to  
4 engage in any substantial gainful activity by reason of any medically determinable  
5 physical or mental impairment which can be expected to result in death or which has  
6 lasted or can be expected to last for a continuous period of not less than twelve  
7 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a  
8 plaintiff shall be determined to be under a disability only if any impairments are of  
9 such severity that a plaintiff is not only unable to do previous work but cannot,  
10 considering plaintiff’s age, education and work experiences, engage in any other  
11 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),  
12 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and  
13 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

14 The Commissioner has established a five-step sequential evaluation process  
15 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step  
16 one determines if the person is engaged in substantial gainful activities. If so,  
17 benefits are denied. 20 C.F.R. §§ 404. 1520(a)(4)(i), 416.920(a)(4)(i). If not, the  
18 decision maker proceeds to step two, which determines whether plaintiff has a  
19 medially severe impairment or combination of impairments. 20 C.F.R. §§

1 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

2       If plaintiff does not have a severe impairment or combination of impairments,  
3 the disability claim is denied. If the impairment is severe, the evaluation proceeds to  
4 the third step, which compares plaintiff's impairment with a number of listed  
5 impairments acknowledged by the Commissioner to be so severe as to preclude  
6 substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); 20  
7 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed  
8 impairments, plaintiff is conclusively presumed to be disabled. If the impairment is  
9 not one conclusively presumed to be disabling, the evaluation proceeds to the fourth  
10 step, which determines whether the impairment prevents plaintiff from performing  
11 work which was performed in the past. If a plaintiff is able to perform previous work  
12 that plaintiff is deemed not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv),  
13 416.920(a)(4)(iv). At this step, plaintiff's residual functional capacity (RFC) is  
14 considered. If plaintiff cannot perform past relevant work, the fifth and final step in  
15 the process determines whether plaintiff is able to perform other work in the national  
16 economy in view of plaintiff's residual functional capacity, age, education and past  
17 work experience. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v.*  
18 *Yuckert*, 482 U.S. 137 (1987).

19       The initial burden of proof rests upon plaintiff to establish a *prima facie* case

1 of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir.  
 2 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
 3 met once plaintiff establishes that a mental or physical impairment prevents the  
 4 performance of previous work. The burden then shifts, at step five, to the  
 5 Commissioner to show that (1) plaintiff can perform other substantial gainful  
 6 activity and (2) a “significant number of jobs exist in the national economy” that  
 7 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

8 **B. Standard of Review**

9 Congress has provided a limited scope of judicial review of a Commissioner’s  
 10 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner’s decision,  
 11 made through an ALJ, when the determination is not based on legal error and is  
 12 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup> Cir.  
 13 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9<sup>th</sup> Cir. 1999). “The [Commissioner’s]  
 14 determination that a plaintiff is not disabled will be upheld if the findings of fact are  
 15 supported by substantial evidence.” *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir.  
 16 1983)(citing 42 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla,  
 17 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n 10 (9<sup>th</sup> Cir. 1975), but less than a  
 18 preponderance. *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9<sup>th</sup> Cir. 1989).  
 19 Substantial evidence “means such evidence as a reasonable mind might accept as

1 adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401  
 2 (1971)(citations omitted). “[S]uch inferences and conclusions as the [Commissioner]  
 3 may reasonably draw from the evidence” will also be upheld. *Mark v. Celebreeze*,  
 4 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review, the Court considers the record as a  
 5 whole, not just the evidence supporting the decision of the Commissioner. *Weetman*  
 6 *v. Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989)(quoting *Kornock v. Harris*, 648 F.2d 525,  
 7 526 (9<sup>th</sup> Cir. 1980)).

8 It is the role of the Commissioner, not this Court, to resolve conflicts in  
 9 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
 10 interpretation, the Court may not substitute its judgment for that of the  
 11 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup>  
 12 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be  
 13 set aside if the proper legal standards were not applied in weighing the evidence and  
 14 making the decision. *Brawner v. Secretary of Health and Human Services*, 839 F.2d  
 15 432, 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to support the  
 16 administrative findings, or if there is conflicting evidence that will support a finding  
 17 of either disability or nondisability, the finding of the Commissioner is conclusive.  
 18 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

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## C. Commissioner's Decision

The ALJ found that Plaintiff met the insured status requirements of the Social Security Act through December 30, 2014. (T at 20). The ALJ determined that Plaintiff engaged in substantial gainful activity (“SGA”) from January 2011 to December 2011 (during the period of alleged disability). (T at 20). However, the ALJ concluded that there was a continuous 12-month period during which Plaintiff did not engage in SGA and, as such, he continued the sequential evaluation. (T at 20).

The ALJ found that Plaintiff's shoulder impingement/bursitis, bicipital tenosynovitis (right shoulder), adhesive capsulitis, rotator cuff syndrome, trigger finger, carpal tunnel, hand pain, and ulnar neuritis were "severe" impairments under the Act. (Tr. 20-21). However, the ALJ concluded that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the impairments set forth in the Listings. (T at 21).

The ALJ determined that Plaintiff retained the residual functional capacity (“RFC”) to perform light work, as defined in 20 CFR § 416.967 (b), meaning that she could lift 20 pounds occasionally and 10 pounds frequently and stand/walk and sit for 6 hours in an 8-hour workday, with some additional limitations. (T at 21-29). In particular, the ALJ found that Plaintiff could occasionally perform pushing and

1 pulling with her upper extremities, but never climb ladders, ropes, or scaffolds. (T at  
2 21). Per the ALJ, Plaintiff can perform frequent (but not constant) reaching  
3 bilaterally, including frequent overhead reaching bilaterally, and can perform  
4 frequent handling and fingering. (T at 21).

5 The ALJ concluded that Plaintiff could perform her past relevant work as a  
6 cashier-checker. (T at 29-30). As such, the ALJ concluded that Plaintiff was not  
7 disabled, as defined under the Social Security Act, between April 27, 2009 (the  
8 alleged onset date) and December 27, 2012 (the date of the decision) and was  
9 therefore not entitled to benefits. (Tr. 30). As noted above, the ALJ's decision  
10 became the Commissioner's final decision when the Appeals Council denied  
11 Plaintiff's request for review. (Tr. 1-4).

#### 12 **D. Plaintiff's Arguments**

13 Plaintiff contends that the Commissioner's decision should be reversed. She  
14 offers four (4) principal arguments in support of this position. First, Plaintiff  
15 contends that the ALJ improperly rejected the opinions of treating and examining  
16 medical providers. Second, Plaintiff challenges the ALJ's credibility analysis.  
17 Third, Plaintiff argues that the ALJ's residual functional capacity determination was  
18 flawed. Fourth, Plaintiff challenges the ALJ's step five analysis. This Court will  
19 examine each argument in turn.

## IV. ANALYSIS

## A. Treating & Examining Providers

In disability proceedings, a treating physician's opinion carries more weight than an examining physician's opinion, and an examining physician's opinion is given more weight than that of a non-examining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995). If the treating or examining physician's opinions are not contradicted, they can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the opinion can only be rejected for "specific" and "legitimate" reasons that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995).

An ALJ satisfies the “substantial evidence” requirement by “setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.” *Garrison v. Colvin*, 759 F.3d 995, 1012 (9<sup>th</sup> Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9<sup>th</sup> Cir. 1998)). “The ALJ must do more than state conclusions. He must set forth his own interpretations and explain why they, rather than the doctors’, are correct.” *Id.*

With that said, while the ALJ is charged with interpreting the evidence and resolving competing conclusions, “an ALJ may not act as his own medical expert,

1 substituting his opinion for a professional interpretation of the clinical testing.”  
 2 *Schols v. Astrue*, No. CV-10-253, 2012 U.S. Dist. LEXIS 28803, at \* 13-15 (E.D.  
 3 Wash. Mar. 5, 2012)(citing *Day v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir.  
 4 1975)); *see also Rohan v. Chater*, 98 F.3d 966, 970 (7th Cir.1996) (noting that the  
 5 ALJ “must not succumb to the temptation to play doctor and make [his] own  
 6 independent medical findings”).

7 In this case, Plaintiff points to several opinions provided by treating or  
 8 examining providers as supporting her allegation of disabling upper extremity  
 9 limitations. In August of 2011, Dr. Owen Higgs, a treating physician, opined that  
 10 Plaintiff could return to light duty work, but could not perform any lifting, pushing,  
 11 or pulling over 5 pounds. (T at 679).

12 In August of 2011, Anne Tweedy, a treating nurse practitioner, completed an  
 13 assessment in which she diagnosed Plaintiff with chronic bilateral shoulder, elbow,  
 14 forearm, and hand pain, along with a history of carpal tunnel. (T at 444). She  
 15 opined that work on a regular and continuous basis would cause Plaintiff’s condition  
 16 to deteriorate and described Plaintiff’s prognosis as “poor.” (T at 445). Ms. Tweedy  
 17 reported that Plaintiff would likely miss 4 or more days of work per month. (T at  
 18 445). She opined that Plaintiff was unable to lift at least 2 pounds. (T at 445).

1 In September of 2011, Lynn Briggs, a treating physician's assistant, opined  
2 that Plaintiff could return to modified duty work, with very limited use of her right  
3 arm and no reaching, overhead work, or lifting over 2 pounds. (T at 510, 527).

4 In December of 2011 Dr. Thomas McClure, a treating physician, opined that  
5 Plaintiff was medically restricted from work. (T at 560, 566). He described Plaintiff  
6 as "temporarily totally disabled." (T at 568). Dr. McClure noted that Plaintiff had  
7 exhausted her modified duty work and had not been "doing well" in any event. (T at  
8 568). In January of 2012, Dr. McClure reported that Plaintiff could not resume her  
9 regular work duties, but said he expected her to resume working after anticipated  
10 shoulder surgery. (T at 616). In April and May of 2012, Dr. McClure reported that  
11 Plaintiff could perform modified duty work, with lifting up to 10 pounds, no lifting  
12 or reaching above shoulder height, and no repetitive use activities. (T at 595-98,  
13 607-09).

14 The ALJ afforded significant weight to Dr. Higgs's conclusion that Plaintiff  
15 could perform work, finding it consistent with the opinions of several examining  
16 physicians (discussed further below), as well as Plaintiff's actual return to work.<sup>2</sup> (T  
17 at 26). However, the ALJ discounted Dr. Higgs's assessment of a 5-pound weight

18 <sup>2</sup> Plaintiff worked intermittently (and occasionally for extended periods) after the alleged onset  
19 date. Throughout much of 2011, Plaintiff worked at Safeway in a light duty position with several  
accommodations. (T at 20).

1 limitation, finding it inconsistent with the physician's treatment notes, which showed  
 2 that Plaintiff had full range of motion in the left upper extremity. (T at 658).

3 The ALJ afforded little weight to Ms. Tweedy's opinion. (T at 27). As a nurse  
 4 practitioner, Ms. Tweedy's opinion is considered an "other source" and her opinion  
 5 is generally entitled to less weight than that of a treating or examining physician.<sup>3</sup>  
 6 The ALJ must give "germane reasons" before discounting an "other source" opinion.  
 7 *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). Here, the ALJ found Ms.  
 8 Tweedy's opinion to be based primarily on Plaintiff's subjective complaints, which  
 9 the ALJ determined were not fully credible. (T at 27). The ALJ also noted that Ms.  
 10 Tweedy's opinion was contradicted by the assessment of several examining  
 11 physicians (discussed further below) and inconsistent with her own treatment notes.  
 12 (T at 27). For example, a February 2011 note described Plaintiff as having no noted  
 13 deformities in her upper extremities and normal range of motion in all joints. (T at  
 14 404).

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 17 <sup>3</sup>In evaluating a claim, the ALJ must consider evidence from the claimant's medical sources. 20  
 18 C.F.R. §§ 404.1512, 416.912. Medical sources are divided into two categories: "acceptable" and  
 19 "not acceptable." 20 C.F.R. § 404.1502. Acceptable medical sources include licensed physicians  
 and psychologists. 20 C.F.R. § 404.1502. Medical sources classified as "not acceptable" (also  
 known as "other sources") include nurse practitioners, therapists, licensed clinical social workers,  
 and chiropractors. SSR 06-03p. The opinion of an acceptable medical source is given more weight  
 than an "other source" opinion. 20 C.F.R. §§ 404.1527, 416.927.

1 The ALJ afforded significant weight to Ms. Briggs's opinion that Plaintiff  
2 could return to work, finding it consistent with Plaintiff's actual activities. (T at 27).  
3 The ALJ discounted Ms. Briggs's conclusion that Plaintiff was limited to lifting 2  
4 pounds, because that assessment was made shortly after Plaintiff suffered a shoulder  
5 injury in September 2011 and was inconsistent with other evidence of record. (T at  
6 27).

7 The ALJ gave significant weight to Dr. McClure's conclusion that Plaintiff  
8 could perform her past job in a modified capacity. (T at 28). The ALJ noted that Dr.  
9 McClure's assessments generally showed that Plaintiff's symptoms were improving  
10 over time. (T at 28). The ALJ gave little weight to Dr. McClure's December 2011  
11 opinions to the effect that Plaintiff was, at that time, unable to work. (T at 28).

12 The ALJ provided a detailed and thorough summary of the facts and  
13 conflicting clinical evidence, stating his interpretation thereof, and making findings  
14 as to each pertinent medical opinion. The ALJ's decision was supported by  
15 substantial evidence.

16 In February of 2010, Dr. Chester McLaughlin, an examining physician,  
17 evaluated Plaintiff's cubital tunnel syndrome in her left upper extremity and  
18 concluded that this condition did not preclude gainful employment. (T at 277). Dr.  
19 McLaughlin also noted severe tenderness diffusely in Plaintiff's left shoulder. He

1 could not say whether Plaintiff had biceps tendinitis, but noted that tests for that  
2 condition were negative. (T at 275).

3 In August of 2010, Dr. Michael Gillespie performed an independent medical  
4 examination. He noted “considerable symptom magnification” (i.e. she expressed  
5 more pain than would be expected for an average person with the same physical  
6 status), no objective findings, and no ratable permanent partial disability. (T at 486).

7 In November of 2010, Dr. Douglas Hanel, an examining physician who  
8 performed three examinations between April of 2009 and November of 2010,  
9 concurred with Dr. Gillespie’s assessment. (T at 486).

10 In a summary prepared by Dr. Gillespie and Dr. Eugene Wong, reference is  
11 made to a September 2010 independent medical examination by Dr. Paul Reiss, in  
12 which Dr. Reiss opined that Plaintiff’s physical findings were “not very impressive,”  
13 with the apparent inference that her findings did not support a disability rating, and  
14 reported that he did “not believe there [were] objective reasons for job restrictions.”  
15 (T at 486-87).

16 Dr. Gillespie and Dr. Wong performed an independent medical examination in  
17 February of 2012. Following a highly detailed summary of Plaintiff’s medical  
18 history, these examining physicians opined that Plaintiff demonstrated unusually  
19 severe symptom magnification and pain behavior, no evident neurological

1 abnormalities, no atrophy of arms or forearms, and chronic pain with a  
 2 psychological basis. (T at 498). They found no ratable permanent partial disability  
 3 for the right shoulder given “vast symptom magnification and pain behavior.” (T at  
 4 501). Dr. Gillespie examined Plaintiff twice, in August of 2010 and February of  
 5 2012. (T at 28).

6 Dr. Robert Hoskins, a non-examining State Agency review consultant, opined  
 7 that Plaintiff could perform light work, provided she did not engage in frequent  
 8 reaching. (T at 71-81). *See Henderson v. Astrue*, 634 F. Supp. 2d 1182, 1190  
 9 (E.D.W.A. 2009)(“The opinion of a non-examining physician may be accepted as  
 10 substantial evidence if it is supported by other evidence in the record and is  
 11 consistent with it.”)(citing *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995)).

12 Plaintiff argues that the ALJ should have weighed the evidence differently and  
 13 given more weight to certain assessments from the treating providers. However, it is  
 14 the role of the Commissioner, not this Court, to resolve conflicts in evidence.  
 15 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Richardson*, 402 U.S. at  
 16 400. If the evidence supports more than one rational interpretation, this Court may  
 17 not substitute its judgment for that of the Commissioner. *Allen v. Heckler*, 749 F.2d  
 18 577, 579 (9th 1984). If there is substantial evidence to support the administrative  
 19 findings, or if there is conflicting evidence that will support a finding of either

1 disability or nondisability, the Commissioner's finding is conclusive. *Sprague v.*  
 2 *Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

3 Here, the ALJ's finding was supported by substantial evidence and should be  
 4 sustained. As noted above, significant support for the ALJ's conclusion as found in  
 5 the assessments of multiple examining physicians. The ALJ's decision to discount  
 6 certain aspects of the treating physicians' opinions was likewise supported by  
 7 substantial evidence, including their conflict with the examining physician opinions.  
 8 Given that the evidence reasonably supported the decision, it must be sustained. *See*  
 9 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999) (holding that if evidence  
 10 reasonably supports the Commissioner's decision, the reviewing court must uphold  
 11 the decision and may not substitute its own judgment).

12 **B. Credibility**

13 A claimant's subjective complaints concerning his or her limitations are an  
 14 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
 15 1190, 1195 (9<sup>th</sup> Cir. 2004)(citation omitted). The ALJ's findings with regard to the  
 16 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*  
 17 *Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir. 1990). "General findings are insufficient:  
 18 rather the ALJ must identify what testimony is not credible and what evidence

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1 undermines the claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*,  
2 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

3 In this case, Plaintiff testified as follows:

4 She lives with her husband and adult son. (T at 43-44). She has had a total of  
5 6 surgeries on her left hand and arm. (T at 44). She has numbness in her fingers and  
6 pain in her elbows and shoulders. (T at 47). While working, Plaintiff compensated  
7 for a "frozen" left shoulder by using her right arm and then began having pain in that  
8 arm. (T at 48). She performed modified light duty work at Safeway during the  
9 alleged period of disability, which involved moving around the store and placing  
10 outdated items in a basket. (T at 49). Safeway allowed her to take as long as she  
11 needed to complete the work. (T at 50).

12 The ALJ found that Plaintiff's medically determinable impairments could  
13 cause the alleged symptoms, but concluded that her statements concerning the  
14 intensity, persistence, and limiting effects of those symptoms were not credible to  
15 the extent alleged. (T at 22).

16 Plaintiff contends that the ALJ did not cite an inconsistency between  
17 Plaintiff's allegations and the medical opinion evidence. As such, Plaintiff argues  
18 that any such inconsistency cannot be a basis for sustaining the ALJ's decision.  
19 However, the ALJ, in fact, concluded that the "objective medical evidence [did] not

1 support [Plaintiff's] allegations of a disabling level of physical functioning." (T at  
2 22).

3 The ALJ's decision was supported by substantial evidence. Dr. Gillespie  
4 noted considerable symptom magnification, no objective findings, and no ratable  
5 permanent partial disability. (T at 486). Dr. Hanel, who performed three  
6 examinations between April of 2009 and November of 2010, concurred with Dr.  
7 Gillespie's assessment. (T at 486). Dr. Reiss opined that Plaintiff's physical findings  
8 were "not very impressive" and reported that he did "not believe there [were]  
9 objective reasons for job restrictions." (T at 486-87). Dr. Gillespie and Dr. Wong  
10 opined that Plaintiff demonstrated unusually severe symptom magnification and pain  
11 behavior, no evident neurological abnormalities, no atrophy of arms or forearms, and  
12 chronic pain with a psychological basis. (T at 498). Neither Dr. Gillespie nor Dr.  
13 Wong found any ratable permanent partial disability for the right shoulder given  
14 "vast symptom magnification and pain behavior." (T at 501). Dr. Hoskins opined  
15 that Plaintiff could perform light work, provided she did not engage in frequent  
16 reaching. (T at 71-81).

17 The ALJ also reasonably concluded that Plaintiff's activities of daily living  
18 were inconsistent with disabling pain. She reported playing piano, using an elliptical  
19 machine, shopping, caring for pets, and performing housework. Plaintiff could

1 perform fine motor tasks, volunteered at a nursing home, and was able to work for  
2 most of 2011, during the period of alleged disability. (T at 24). Although her work  
3 at Safeway was modified significantly (e.g. Plaintiff could essentially work at her  
4 own pace), the ALJ reasonably cited the performance of this modified work as one  
5 reason among several for discounting Plaintiff's claim of disabling limitations.

6 When assessing a claimant's credibility, the ALJ may employ "ordinary  
7 techniques of credibility evaluation." *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217,  
8 1224 n.3 (9<sup>th</sup> Cir. 2010)(quoting *Smolen v. Chater*, 80 F.3d 1273, 1284 (9<sup>th</sup> Cir.  
9 1996)). Activities of daily living are a relevant consideration in assessing a  
10 claimant's credibility. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9<sup>th</sup> Cir. 2001).  
11 Although the claimant does not need to "vegetate in a dark room" to be considered  
12 disabled, *Cooper v. Brown*, 815 F.2d 557, 561 (9<sup>th</sup> Cir. 1987), the ALJ may discount  
13 a claimant's testimony to the extent his or her activities of daily living "contradict  
14 claims of a totally debilitating impairment." *Molina v. Astrue*, 674 F.3d 1104, 1112-  
15 13 (9<sup>th</sup> Cir. 2011).

16 For the foregoing reasons, this Court finds the ALJ's credibility determination  
17 supported by substantial evidence.

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1      **C. RFC/Steps Four & Five**

2      The ALJ determined that Plaintiff retained the RFC to perform light work,  
 3 meaning that she could lift 20 pounds occasionally and 10 pounds frequently and  
 4 stand/walk and sit for 6 hours in an 8-hour workday, with some additional  
 5 limitations. (T at 21-29). In particular, the ALJ found that Plaintiff could  
 6 occasionally perform pushing and pulling with her upper extremities, but never  
 7 climb ladders, ropes, or scaffolds. (T at 21). Per the ALJ, Plaintiff can perform  
 8 frequent (but not constant) reaching bilaterally, including frequent overhead  
 9 reaching bilaterally, and can perform frequent handling and fingering. (T at 21).

10     At step four of the sequential evaluation, the ALJ concluded that Plaintiff  
 11 could perform her past relevant work as a cashier-checker. (T at 29-30). In the  
 12 alternative, considering Plaintiff's age, education, work experience, and RFC, the  
 13 ALJ also found that there were other jobs that exist in significant numbers in the  
 14 national economy that Plaintiff can perform. (T at 29-30).

15     Plaintiff challenges these findings for substantially the reasons already noted,  
 16 *i.e.* that the ALJ did not properly assess the treating providers' opinions and should  
 17 not have discounted her credibility. For the reasons outlined above, this Court finds  
 18 the ALJ's decision supported by substantial evidence. *See, e.g., Hall v. Colvin*, No.  
 19 CV-13-0043, 2014 U.S. Dist. LEXIS 45006, at \*24-25 (E.D. Wash. Mar. 31,

1 2014)(“A claimant fails to establish that a Step 5 determination is flawed by simply  
2 restating argument that the ALJ improperly discounted certain evidence, when the  
3 record demonstrates the evidence was properly rejected.”)(citing *Stubbs-Danielson*  
4 *v. Astrue*, 539 F.3d 1169, 1175-76 (9<sup>th</sup> Cir. 2008).

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#### **IV. CONCLUSION**

7 After carefully reviewing the administrative record, this Court finds  
8 substantial evidence supports the Commissioner’s decision, including the objective  
9 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly  
10 examined the record, afforded appropriate weight to the medical evidence, including  
11 the assessments of the examining medical providers and the non-examining  
12 consultant, and afforded the subjective claims of symptoms and limitations an  
13 appropriate weight when rendering a decision that Plaintiff is not disabled. This  
14 Court finds no reversible error and because substantial evidence supports the  
15 Commissioner’s decision, the Commissioner is GRANTED summary judgment and  
16 that Plaintiff’s motion for judgment summary judgment is DENIED.

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20 22  
DECISION AND ORDER – COLEMAN-WILLIAMSON v COLVIN 14-CV-03073-VEB

## V. ORDERS

IT IS THEREFORE ORDERED that:

Plaintiff's motion for summary judgment, Docket No. 19, is DENIED.

The Commissioner's motion for summary judgment, Docket No. 22, is GRANTED.

The District Court Executive is directed to file this Order, provide copies to counsel, enter judgment in favor of the Commissioner, and close this case.

DATED this 16<sup>th</sup> day of March, 2015.

/s/**Victor E. Bianchini**  
**VICTOR E. BIANCHINI**  
**UNITED STATES MAGISTRATE JUDGE**